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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

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13
14 UNITED STATES OF AMERICA,)
15)
16 Plaintiff,)
17)
18 v.)
19)
20 ELVIS MANUEL RUVALCABA,)
21)
22 Defendant.)
23 _____)
24

2:12-cr-290-GMN-CWH

25 **JOINT STIPULATION FOR A SENTENCE REDUCTION**
26 **PURSUANT TO 18 U.S.C. § 3582(c)(2)**
27

28 The United States of America, by Assistant United States Attorney
29 Elizabeth O. White, and Defendant Elvis Manuel Ruvalcalba, by Assistant
30 Federal Public Defender Nisha Brooks-Whittington, submit the following
31 Joint Stipulation for Discretionary Relief pursuant to 18 U.S.C.
32 § 3582(c)(2).

1 The parties agree and stipulate to the following:

2 **A. Material Facts in Support of Joint Stipulation**

3 Defendant was previously convicted and sentenced for offenses
4 involving controlled substances.

5 On June 13, 2013, this Court sentenced Defendant to 46 months'
6 imprisonment for possessing with intent to distribute methamphetamine
7 in violation of 21 U.S.C. §§ 841(a)(1), and (b)(1)(B)(viii). CR 53. This Court
8 previously found: (a) that Defendant's total offense level was 23; (2) that
9 Defendant's criminal history category was I; and (c) that the guidelines
10 sentencing range was 46-57 months' imprisonment. This Court imposed a
11 sentence at the low end of the guidelines range.

12 Following imposition of sentence, the U.S. Sentencing Commission
13 promulgated Amendment 782, which took effect on November 1, 2014.
14 Amendment 782 (a) reduces the guidelines offense levels across all drug
15 types; and (b) with certain limitations, applies retroactively to defendants
16 sentenced prior to November 1, 2014.

17 Defendant seeks a discretionary reduction in sentence pursuant to
18 Amendment 782, and in accordance with 18 U.S.C. § 3582(c)(2) which
19 (among other things) provides that, in certain circumstances, a sentencing

1 court “may reduce the term of imprisonment.” Pursuant to Amendment
2 788, sentencing reductions under Amendment 782 may not result in a
3 defendant’s release from BOP custody prior to November 1, 2015.

4 **B. Terms of Sentence Reduction Under 18 U.S.C. § 3582(c)(2)**

5 Defendant is eligible for a discretionary reduction to the guideline
6 imprisonment range, and the parties agree that a reduction is appropriate.
7 Pursuant to 18 U.S.C. § 3582(c)(2) and Guidelines Amendment 782: (a)
8 Defendant’s revised total offense level is 21; (b) Defendant’s criminal
9 history category remains I; and (c) the revised advisory guidelines
10 sentencing range is 37-46 months’ imprisonment. Based on the foregoing,
11 the parties jointly recommend that Defendant’s sentence be reduced to 37
12 months’ imprisonment, a sentence at the low end of the revised guidelines
13 range.¹ The parties understand and stipulate that, if this reduced sentence
14 would result in a release date prior to November 1, 2015, then the
15 defendant will be ordered released on November 1, 2015.

16 **C. Waivers; Review and Consent of Defendant**

17 Defendant knowingly and voluntarily waives any right to appeal any
18 aspect of the revised sentence, *except that*, if the revised sentence exceeds

¹ This Court previously determined that Defendant is eligible for safety-valve relief from the statutory minimum sentence for the offense.

1 the recommended term of 37 months, or November 1, 2015, whichever is
2 later, Defendant may appeal that aspect of the revised sentence. *See*
3 Declaration, attached as Exhibit 1.

4 Defendant (a) waives any right he may have to a hearing on his
5 motion under 18 U.S.C. § 3582(c)(2); (b) waives any right he may have to
6 attend such a hearing; (c) has reviewed this stipulation with defense
7 counsel; and (d) agrees with and consents to this stipulation. *See*
8 Declaration, attached as Exhibit 1.

9 **D. Addendum to PSR**

10 The parties jointly request, for purposes of this Court's adjudication
11 of Defendant's pending motion under 18 U.S.C. § 3582(c)(2), that this
12 Court direct the United States Probation Office to submit an addendum to
13 the Presentence Investigation Report (PSR), confirming Defendant's
14 revised guidelines imprisonment range and describing any public safety
15 factors (including Defendant's institutional history) relevant to this Joint
16 Stipulation and discretionary relief under 18 U.S.C. § 3582(c)(2).

17 **E. Acknowledgment of Reserved Rights**

18 Notwithstanding this Joint Stipulation, the United States expressly
19 preserves and does not waive its contentions that a defendant seeking

1 relief under 18 U.S.C. § 3582(c)(2) has no constitutional or statutory right
2 to counsel, to a hearing on the motion, or to be present at any hearing on
3 the motion.

4 **F. Conclusion**

5 Based on the above, the parties respectfully request that the Court
6 enter an order granting Defendant a sentence reduction pursuant to 18
7 U.S.C. § 3582(c)(2), and reducing his concurrent sentences to 37 months'
8 imprisonment; with all other provisions of the judgment dated June 19,
9 2013, to remain in effect; and with an "effective date" of November 1, 2015.

10 Respectfully submitted this 17th date of February, 2015.

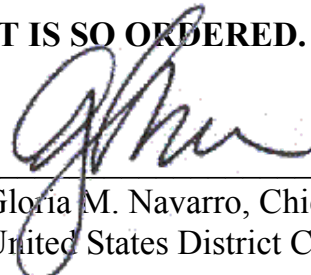
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12 RENE L. VALLADARES
13 Federal Public Defender
14

DANIEL G. BOGDEN
United States Attorney

15
16 By: s/ Nisha Brooks-Whittington
17 Nisha Brooks-Whittington
18 Asst. Federal Public Defender
19 *Counsel for Defendant*
20 *Elvis Manuel Ruvalcalba*

By: s/ Elizabeth O. White
Elizabeth O. White
Appellate Chief and
Assistant United States Attorney

IT IS SO ORDERED.



Gloria M. Navarro, Chief Judge
United States District Court

Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	2:12-cr-290-GMN-CWH
)	
ELVIS MANUEL RUVALCABA,)	
)	
Defendant.)	
_____)	

DECLARATION IN SUPPORT OF
JOINT STIPULATION UNDER 18 U.S.C. § 3582(c)(2)

1. I, Elvis Manuel Ruvalcalba, am the Defendant in the above-captioned case and the movant seeking relief in a pending motion under 18 U.S.C. § 3582(c)(2).
2. I have read and discussed with my attorney, Nisha Brooks-Whittington, the "Joint Stipulation for a Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)" (the "Joint Stipulation") to be filed in this case.
3. I agree with and consent to the Joint Stipulation.
4. My attorney has explained my appellate rights to me. I hereby knowingly and voluntarily waive the right to appeal any aspect of the revised sentence imposed by the Court under the terms of the Joint Stipulation, *except that*, if the revised sentence exceeds the recommended term of 37 months' imprisonment, or November 1, 2015, whichever is later, I may appeal that aspect of the revised sentence.
5. I hereby waive any right I may have to a hearing on my pending motion for discretionary relief under 18 U.S.C. § 3582(c)(2), or to attend such a hearing.

DATED this 8 day of FEBRUARY, 2015.

ELVIS M. RUVALCABA
Elvis Manuel Ruvalcalba